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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the application of:)	ART UNIT: 3661
)	
Clifford Kraft et Vasilios)	
Dossas)	EXAMINER: Y. Beaulieu
)	
Serial Number: 10/674,151)	
)	
Filing Date: Sept 29, 2003)	
)	
Title: SYSTEM AND METHOD FOR)	
PROVIDING REAL-TIME ROAD)	
CONSTRUCTION INFORMATION)	
FOR VEHICLE TRIP)	
PLANNING SYSTEMS)	
)	
)	

SUBMISSION OF APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Honorable Commissioner:

Kindly accept the applicant's appeal brief in this case. A timely notice of
appeal was filed Sept. 18, 2006. The fee required is attached.

Respectfully Submitted

Clifford Kraft

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Name: Clifford H. Kraft



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BRIEF ON APPEAL

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This appeal is taken from the final rejection of all claims pending in this application, claims 9-23 (See Appendix).

The notice of appeal to the Board of Patent Appeals and Interferences was timely filed by first class mail on Sept. 18 2006 from a final office action that issued on June 21, 2006.

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APPEAL BRIEF

This is an appeal to the United States Patent Office Board of Patent Appeals and Interferences of application number 10/674,151 filed Sept. 29, 2003.

I. Real Party of Interest

The real parties of interest are the inventors Clifford H. Kraft and Vasilios Dossas.

II. Related Appeals and Interferences

There are no other related appeals or interferences.

III. Status of the Claims

Claims 9-23 are pending and have been finally rejected. The status of each claim is as follows:

Claims 1-8 (cancelled).

Claims 9-23 (previously presented) - rejected.

The claims should be considered separately and do not stand or fall together.

IV. Status of Amendments

There have been no amendments after the final rejection.

V. Summary of Claimed Subject Matter

A. General Description

The present invention provides a system that allows vehicle telemetric equipment and other trip planning systems to be updated with the location of the latest road construction. A central information gathering location for gathering road construction information for various vehicle routes can provide this road construction information to on-board telemetrics or trip planning equipment allowing the equipment to display the road construction on a map along with other map data. The road construction information can contain data on the number of lanes affected, construction work times and estimated delay times. The provider of the road construction information can charge a fee for the service. The presence of this information overlaid on a map allows the user to evaluate each route based on the presence of construction and to decide whether to take that route or to detour or take a completely different (and maybe longer) route. For example, a user trying to travel from Chicago to Albuquerque might see that there are many different construction sites along Route 55 between Chicago and Saint Louis. This user could decide to go west instead and then cut down to Albuquerque through Kansas instead of taking the shorter route through Saint Louis and Missouri.

Figure 1 shows a block diagram of a representative system where an information provider (1) receives road constructing information from direct observations (2), federal and state agencies (3) and driver reports (4). Update to

vehicle on-board equipment can be made by a wireless interface (5) or a CD-ROM (6) or like device.

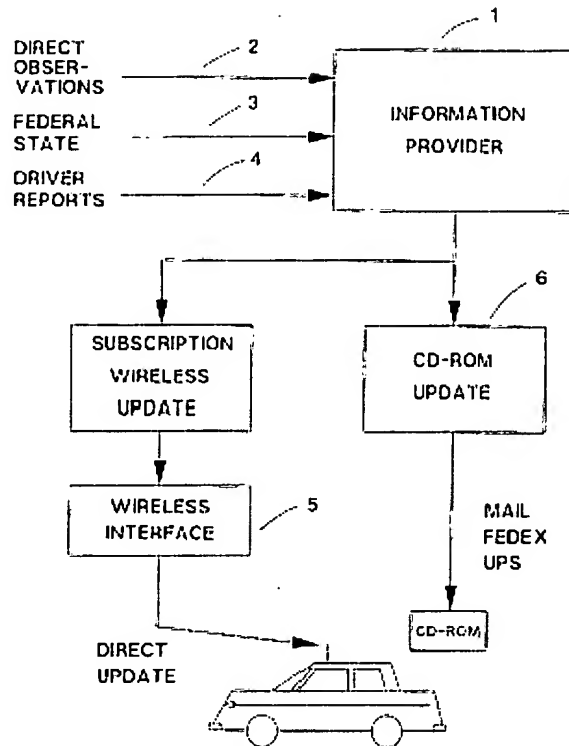


FIGURE 1

Figure 2 shows a simulated map with road construction information shown and an alternate route suggested.

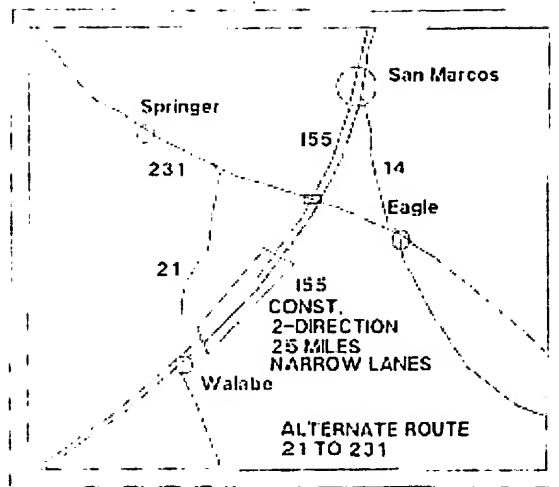


FIGURE 2

B. Mapping of the Independent Claims to the Specification - Associated Structure for Means plus Function Elements

The independent claims are 9, 17 and 21. References to the pages, paragraphs and lines in the specification refer to the specification document as filed on Sept. 29, 2003. Claim 9 contains a means plus function element.

Independent Claims

Claim 9. A system for providing road construction information to vehicle on-board telematics systems (**Abstract**) comprising:

least one telemetric system in a vehicle (p. 1, line 17 - p. 2, lines 1-5), said telemetric system displaying map information (p. 2, line 4);

a central information gathering location (**Fig. 1, ref. 1**) for gathering road construction information for vehicle routes (**Fig. 1, refs. 1, 2, 3**), said road construction information being at least partially supplied by a government agency (**Fig. 1, ref. 3**);

a means (**Fig. 1, refs. 3, 6**) for providing said road construction information to said telematics system from said central location, wherein said telematics system displays (**Fig. 2, p. 3, line 18**) said road construction information and map information (**Fig. 2**).

Means plus function:

function: providing road construction information to said telematics system from said central location.

Structure: Fig. 1, ref. 5 (wireless interface), Fig. 1, ref. 6 (CD Rom), p. 6, lines 16-22 and p. 7. lines 1-3 (automatic telephone call) (broadcast).

Claim 17. A method of providing for wide area trip planning with a telematics system located in a vehicle (**Abstract**) comprising the steps of:

receiving road construction information from at least one governmental agency for a plurality of routes (**Fig. 1, ref. 3**);

transmitting said road construction information system to said telematics system (**Fig. 1, refs. 5, 6; p. 6, lines 16-22, p. 7, lines 1- 3**);

causing said road construction information to be displayed (**Fig. 2, p. 3, line 18**) in a vehicle and causing map (**Fig. 2**) information to be displayed in the vehicle wherein said construction information includes number of lanes affected (**p. 4, line 2**) and times when said lanes are affected by said construction (**p. 4, lines 2-3**).

Claim 21. A system for long distance trip planning (**Abstract**) comprising a computer (**p. 3, lines 8-11**), a storage device (**p. 3, line 22; p. 8, lines 10-13**), and a communications sub-system (**Fig. 1, refs. 5, 6**) wherein said computer receives reports of road construction sites through said communications sub-system (**Fig. 1, ref. direct update**) and stores said reports in said storage device (**p.8, line 18**), said computer then displaying map information and construction information (**Fig. 2**).

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 9-12, 15 and 16 stand rejected under 35 U.S.C. §102(e) as being anticipated by Bruce et al. Claims 13, 14 and 17-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bruce et al. in view of Desai et al.

VII. History of the Prosecution

A provisional application was filed Sept. 30, 2002. The utility application was filed Sept. 29, 2003. A restriction requirement was issued, and an election made Nov. 23, 2004. A first office action was received Dec. 1, 2004. A response

was filed March 1, 2005. A notice of allowance was received May 16, 2005. The issue fee was paid Aug. 12, 2005. A notice of withdrawal of the allowance and non-final office action was received Aug. 19, 2005. A response was filed Nov. 9, 2005. A second non-final office action was received Jan. 17, 2006. A response was filed April 10, 2006. A telephone interview was held with the examiner on April 6, 2006. A final office action was received June 21, 2006. A notice of this appeal was filed Sept. 18, 2006.

VIII. Argument

I. Issues:

(A) Whether claims 9-12, 15 and 16 are anticipated by the Bruce reference.

(B) Whether claims 13, 14 and 17-23 are rendered obvious by the Bruce reference in view of the Desai reference.

II. Introduction:

A. Description of the Bruce et al. Reference

Bruce et al. (U.S. 6,765,998) teach a method and system for providing a telephone caller information assistance such as driving directions from a starting location to a destination location. First an attempt is made to automatically locate the caller, then the principal method of providing directions to a caller is to play an audio set of instructions (Abstract). The caller first receives a message that

his call is being transferred to an operator; the operator finds the directions from a database, and the directions are played back verbally over the telephone (Fig. 4 and Abstract).

In the preferred embodiment, the user first places a telephone call to the access system and then selects a desired destination location. This may be the name of a person, an address, hotel, store, restaurant, office, or originate from the white or yellow pages. The callers location is automatically determined, and the service automatically communicates step-by-step driving directions to the caller by synthesized voice, from a live operator or by a voice mail or Email message (Col. 2, lines 28-67). In particular, the route to the destination may be mapped "taking into account the route traffic, travel times, road conditions, and route weather conditions." (Col. 2, lines 57-60). What is not taught is displaying for the user location along the route of any road construction sites. Only general "route traffic" and "travel times" are taught. While these may in some cases relate to the presence of road construction, they alone, do not locate road construction sites for the user. Bruce teaches that road construction information may be obtained from local travel authorities (Col. 9, lines 25-35), and that "the traffic/construction can be used by the system to avoid routes that are closed or are experiencing undue delays due to construction." (Col. 9, lines 46-51). However, Bruce only uses this information to automatically choose a route for the user; there is no teaching or suggestion of displaying the location of construction sites so that the user can themselves choose the route based on the construction data. In contrast, the applicant's invention allows the user to evaluate all road

construction along any route and then decide, possibly based on the amount and length of the construction, whether to use that route or to choose another.

Figure 3 shows some of the major differences between the Bruce et al. reference and the applicant.

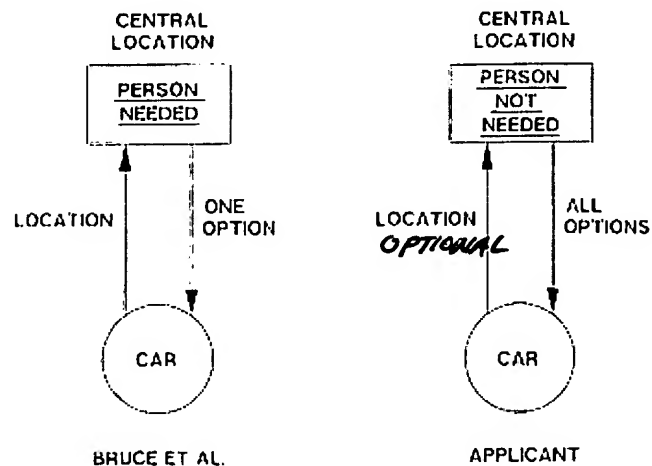


Figure 3

Bruce et al. teach that a person phones in from a car or elsewhere and the location is determined. A live operator or other person is then needed to return information to the user. The user only receives one option on how to get where he or she wants to go - a particular route determined by the system of Bruce et al. In contrast, in the applicant's invention, no person is needed, and even more important, the user is allowed to consider all options as to routes since road construction information is returned for any regions the user wants to see. As previously stated, a driver may a totally different route even through different

states to reach the destination. This is a decision the user is free to make since he or she has complete road construction information for any proposed route. Bruce et al. teach finding one particular route from the user's location to a chosen destination; the applicant teaches supplying road construction information for any route between any points, not just a single route from the current location of the user to some other fixed location. With the applicant's invention, for example, a user could be in Seattle planning a trip from Phoenix to Dallas. This is impossible with the system of Bruce et al.

B. Description of the Desai et al. Reference

Desai et al. (U.S. 5,862,509) teach methods for planning an optimum vehicle route from a selected origin to a selected destination with a selected departure time, taking into account the presence of timed turn restrictions and/or timed lane restrictions. Computations of an optimum route can be performed at the vehicle or at a station that communicates with the vehicle. (Abstract).

The Desai invention is concerned with computing an optimum route in the presence of timed turn restrictions (such as prohibited left turns that become active during rush hours) and timed lane restrictions (such as timed lane closures on bridges or freeways or special commuter lanes that are only open during certain timed periods each day). The occurrence of an unexpected lane closure (such as an accident) is also considered. (Col. 2, lines 23-41). While the reference teaches "vehicle barriers" both expected and unexpected, it does not

teach anything about road construction or the display of road construction information in the vehicle with map information.

This reference does teach displaying map information on a display, and it teaches highlighting the display with timed turn restrictions and timed lane restrictions (Col. 8, lines 47-67); however, it fails to teach highlighting or displaying of road construction sites.

As with the Bruce et al. reference, the Desai reference does not teach giving the user all of the options for routes and depends upon a knowledge of the user's current location.

III. The Legal Standard for Anticipation

Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference or embodied in a single prior art device or practice. In re Paulson, 30 F.3d 1475, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). The corollary of the rule is that absence from the reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ2d 81 (Fed. Cir. 1986). To anticipate a patent claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. Atlas Powder Co. v. IRECO Inc., 190 F.3d 1342, 51 USPQ2d 1943 (Fed. Cir. 1999). The reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it. See, In re Spada at 708.

IV. The Bruce et al. reference does not anticipate claims 9-12, 15 and 16

Claim 9 requires a) a telemetric system in a vehicle, b) a central information gathering location for gathering road construction information for vehicle routes, and c) a means for providing said road construction information to said telematics system from said central location, wherein said telematics system displays said road construction information and map information. The Bruce et al. reference does not teach displaying construction information and map information on a telematics system in a vehicle. In fact, this reference does not teach displaying road construction information at all.

The examiner cites col. 9, lines 21-57 to support providing road construction information and displaying it along with map information. However, here Bruce teaches that the “system can be programmed to avoid mapping routes through construction routes by creating alternative routes, or recalculating routes not using the sections of road under construction.” (Col. 9, lines 48-51), and that the “text route instructions can then be transmitted to the operator console (18) to allow the operator to view the route instructions. The operator may then relay the route instructions to the caller.” (Col. 9, lines 52-57). Nowhere does Bruce ever teach displaying road construction information on a map. Even the operator at the central location does not see a map, only “text route instructions”. Neither the operator nor the user is made aware of where the construction actually is.

One object of the present invention is to provide a user with all of the options available and have him or her make the decision. As outlined above, the user may select even longer or circuitous routes, or change the routes during the trip. The user may plan the trip from a completely different geographic location.

V. The Legal Standard for Obviousness

The examiner has the burden under 35 U.S.C. §103(a) to establish a *prima facie* case of obviousness. In re Thrift, 298 F.3d 1357, 1363, 63 U.S.P.Q.2d 2002, 2006 (Fed. Cir. 2002). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. In re Brouwer, 77 F.3d 422, 425, 37 U.S.P.Q.2d 1663, 1666 (Fed. Cir. 1996) ("when the references cited by the examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned"). To establish a *prima facie* case of obviousness, the examiner must show some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art that would lead that individual to combine the relevant teachings of the references. In re File, 837 F.2d 1071, 1074; 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The prior art references relied upon, when combined, must teach or suggest all the claim limitations of the invention. In re Royka, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 582 (CCPA 1974). In addition to the requirement that each and every claim limitation be taught or suggested by the prior art, there must be some suggestion or motivation, either in the references or in the knowledge generally available to

one of ordinary skill in the art, to modify the reference or to combine reference teachings. In re Jones, 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1943-44 (Fed. Cir. 1992). The mere fact that the prior art could be so modified does not make the modification obvious unless the prior art suggested the desirability of the modification. See, In re Rouffet, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998) (reversing the Board's *prima facie* obviousness rejection where, although the combination of the references taught every element of the claimed invention, the references were without a motivation to combine). Furthermore, the teaching or suggestion to make the claimed combination must be found in the prior art, not in the applicant's disclosure. In re Vaeck, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). To prevent the use of hindsight based on the invention to defeat patentability of the invention, the examiner is required to show a motivation to combine. In re Rouffet at 1357. If an independent claim is found to be nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. In re Fine, 837 F.2d 1071, 1076, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

VI. The Bruce et al. reference in combination with the Desai reference does not render claims 13, 14 and 17-22 obvious

The examiner states that the Bruce et al. reference contains all of the limitations of the claims except information concerning affected lanes. For this, he cites the Desai reference. However, as previously argued under anticipation, the Bruce reference does not teach displaying construction information. In fact,

Bruce teaches away from any displaying of information and states that step-by-step automatically computed directions should be supplied to the user by voice. Even the operator in the Bruce invention does not get to see any construction information; rather, the Bruce system automatically considers construction information in generating a route. Adding the Desai reference does not cure this. For this reason, the examiner has failed to make a *prima facie* case of obviousness.

Table 1 shows the elements of the independent claims missing in Bruce and Desai:

<u>Claim Limitation</u>	<u>Bruce et al.</u>	<u>Desai</u>
Claim 9:	No	Yes
At least one telemetric system;		
A central information gathering location;	Yes	Yes
means for providing road construction information to said telemetric system;	No	No
Claim 17 - telemetrics system	No	Yes
receiving road construction information from at least one governmental agency;	Yes	No
transmitting said road construction information to said telemetrics system;	No	No
causing said the construction information to be displayed in a vehicle including closed lanes and times;	No	No - no road construction information displayed
Claim 21: - trip planning	Yes	Yes

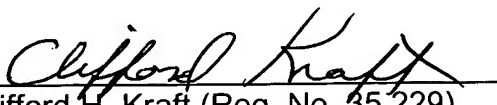
system		
computer;	Yes - not in car	Yes
storage device;	Yes - not in car	Yes
communications sub-system;	Yes	Yes
computer receives reports of road construction sites;	Yes	No
computer stores the reports in the storage device;	Yes	No
computer displays map information and road construction information.	No	No

Table 1

IX. Conclusion

The Appellant respectfully submits that the that the Bruce et al. reference does not anticipate any of the pending claims, and that the Bruce et al. reference alone, or in combination with the Desai et al. reference, fails to render the claimed invention obvious.

Respectfully submitted


 Clifford H. Kraft (Reg. No. 35,229)
 Attorney of Record

APPENDIX I. Claims on appeal

Claim 9. A system for providing road construction information to vehicle on-board telematics systems comprising:

at least one telemetric system in a vehicle, said telemetric system displaying map information;

a central information gathering location for gathering road construction information for vehicle routes, said road construction information being at least partially supplied by a government agency;

a means for providing said road construction information to said telematics system from said central location, wherein said telematics system displays said road construction information and map information.

Claim 10. The system of claim 9 wherein said means for providing said road construction information to said telematics systems is wireless.

Claim 11. The system of claim 9 wherein said construction information is displayed on said map information.

Claim 12. The system of claim 10 wherein said wireless means is a local area network.

Claim 13. The system of claim 9 wherein said road construction information further contains information on number of lanes affected.

Claim 14. The system of claim 9 wherein said road construction information further contains information on construction work times.

Claim 15. The system of claim 9 wherein a fee is charged for said road construction information.

Claim 16. The system of claim 15 wherein said fee is a periodic subscription fee.

Claim 17. A method of providing for wide area trip planning with a telematics system located in a vehicle comprising the steps of:

receiving road construction information from at least one governmental agency for a plurality of routes;

transmitting said road construction information system to said telematics system;

causing said road construction information to be displayed in a vehicle and causing map information to be displayed in the vehicle wherein said

construction information includes number of lanes affected and times when said lanes are affected by said construction.

Claim 18. The method of claim 17 wherein said times include work start and stop times.

Claim 19. The method of claim 17 wherein the step of transmitting is by cellular telephone.

Claim 20. The method of claim 17 further comprising said telemetrics system presenting information relating to said road construction in text form.

Claim 21. A system for long distance trip planning comprising a computer, a storage device, and a communications sub-system wherein said computer receives reports of road construction sites through said communications sub-system and stores said reports in said storage device, said computer then displaying map information and construction information.

Claim 22. The system of claim 21 wherein said computer is mounted in a vehicle.

Claim 23. The system of claim 21 wherein said communications sub-system includes cellular telephone.

APPENDIX II. Evidence Appendix

NONE

Appendix III. Related Proceedings Appendix

NONE